

4-State Governmental Affairs Meeting Attendance List

DATE: November 13, 2013

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45 on-site attendees + 1 call-in (Ann Lavaty) + illegible name at bottom of Page 1 of handwritten sign-in (looks li

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7th Annual 4-State Governmental Affairs Meeting Minutes

By Lyle Christensen, NWEA GA Committee Member

The 7th Annual 4-State Governmental Affairs Meeting was held on November 13, 2013 at the new EPA Region 7 office in Lenexa, KS. There were a total of 47 on-site attendees and one EPA Region 7 call-in participant – a large increase from last year's 33 attendees. Reference the sign-in sheet. Representatives and numbers participating in parentheses() were as follows: EPA Region 7 (14); EPA Headquarters (3); Water Environment Federation Headquarters (1); State regulatory officials: KDHE (1), MDNR (2), IDNR (2), and NDEQ (5); Governmental Affairs Committees: KWEA (3), MWEA (1), IAWEA (4), and NWEA(5); the Missouri Public Utility Alliance (1); the City of Springfield, MO (2); the City of Kansas City, MO (3); and the Iowa League of Cities (1). IAWEA was the lead GA Committee this year that organized the event – an excellent job. Kansas will take the lead on meeting arrangements for next year. The photograph by Todd Boling of NWEA below shows the majority of attendees. There are additional photos available.



Reference the Agenda PDF file: "Agenda_4-State_GA_Meeting_11-13-2013.PDF". The meeting covered pre-selected regulatory "hot topics" that were presented and further discussed for a meeting span of over 4 hours. Several of this year's meeting topics have achieved significant national attention. WEF acknowledged the discussion at the 4-State GA Meeting in their "This Week in Washington" release following the meeting. The pre-selected "hot topics" were:

- 8th Circuit Court Decision Implications (IAWEA presentation).
- Nutrient Issues (IDNR presentation).
- Integrated Municipal Stormwater and Wastewater Planning Approach and Other Wet Weather Issues. (City of Springfield, MO presentation).
- EPA/States Upcoming Calendar of Priorities (working lunch).
- Affordability and Funding Priorities (NDEQ presentation).
- Nutrient Reduction Strategy Progress Report (KDHE presentation).

Two additional topics were added during the course of the meeting:

- Federal District Court ruling ordering EPA to determine "necessity" of nutrient controls for the Mississippi River Watershed with respect to the Gulf Hypoxia situation.
- Discharge of water treatment plant residuals into the major river systems.

The presentation sequences within the agenda were adjusted to accommodate travel plans for the attendees from EPA HQ. Each of the original topics included a number of very informative presentation slides and/or hand-out materials and additional post-meeting materials for the last two topics will be distributed with these meeting minutes to all meeting attendees. All of these important supplemental materials are also to be posted out on the NWEA website at:

<http://www.ne-wea.org/news/committees/governmental-affairs>.

Alternatively, you may email lyle.christensen@hdrinc.com or call (402) 399-1329 to arrange having the materials sent to you, including the MP3 format audio recording of the entire meeting. The following lists the key points raised from each of the topic areas:

8th Circuit Court Decision Implications (IAWEA presentation)

PDF File References:

- Presentation slides prepared by Hall & Associates, who tried the case: "Iowa League v EPA presentation - ILOC presentation 9-26-13-1.PDF".
- 8th Circuit Court ruling: "Iowa League of Cities, 8th Cir 3-25-13.PDF".
- 8th Circuit Court ruling: "Order Denying EPA Petition for Rehearing 7-10-13.PDF".

By way of background, in 2005-2008 EPA was seeking to develop policies (not rule-making) to deal with wet weather flow events at wastewater treatment plants (WWTPs), including a prohibition on internal blending. Internal blending was being considered to be another form of illegal bypass from that of total-flow secondary treatment. Such blending typically involved routing a portion of high wet weather flows

from primary clarifier effluent to blend with the regular secondary treatment effluent before discharge. It was common for WWTP operators to use this practice to avoid loss of mixed liquor suspended solids during high wet weather flow conditions. EPA was also intending to prohibit bacteria mixing zones during wet weather.

As per the slides, these actions have affected State and Federal CSO Long-Term Control Plans, stormwater management, NPDES permits, compliance schedules and enforcement orders, SSO strategies, TMDLs, State rule-making, water quality criteria updates, and modification requests. In terms of potential impacts on municipalities, EPA's actions limited remedial options for compliance, which in many cases led to costly detention basins or expanded flow treatment options. MS4 stormwater permit requirements were also expanded.

Consequently, the Iowa League of Cities filed litigation through Hall & Associates against EPA in the United States Court of Appeals for the 8th Circuit on November 13, 2012 for attempting to use internal letters as the basis to invoke the above prohibitions and drive enforcement against permittees. On March 25, 2013 the 8th Circuit rendered its decision against EPA with the following significant results (Note: text enclosed in brackets “[]” represents independent narrative that has been added for supplemental explanation; not intended to represent an opinion or any bias):

- The Court rule that EPA failed to follow Federal “due process” rule-making requirements. [Note: Proper rule-making requires public comment and promulgating the resultant rule-making via the Federal Register. The Court expressed criticism of EPA's informal procedures. This type of issue (guidance vs. policy vs. rule-making) was a prior topic of discussion at the 2011 4-State GA Meeting, where EPA R7 acknowledged at that time that HQ was attempting to find “middle ground” for rendering program guidance (that was essentially being treated as an interim rule) as a more expedient method than would otherwise occur with the much more lengthy time required for traditional rule-making. It was noted then that EPA gets routinely criticized or sued by NGOs for sometimes being too slow to respond to the perceived need for additional rule-making or enforcement; and on the flip side, criticism often comes from the engineering/technical community for sometimes being too fast to allow necessary underlying science to be more fully developed for difficult cause-and-effect environmental impact issues. Consequently, the fast-track use of internal EPA letters for wet weather program direction became a target of litigation.]
- The Blending prohibition was vacated.
- The Court ruled that EPA exceeded its authority to regulate internal processes and operations within a WWTP – their authority is to be strictly limited to the final effluent discharge to the receiving body of water – that is, EPA can exercise “end of pipe” water quality authority only.
- Internal processes associated with flow bypassing to cope with high wet weather flows do not have to include biological secondary treatment or other specific technologies. [Implication: Appropriate technologies can be used to achieve equivalent or better combined effluent discharge compliance at the option of the permittee with respect to secondary treatment requirements and water quality effluent limits (WQBELs). It is to be noted that secondary treatment requirements are not subject to in-stream dilution (by definition, they apply to end-of-pipe), while WQBELs can recognize in-stream dilution at the discretion of the States.]
- The Bacteria Mixing Zone Prohibition was similarly vacated. [The States have direct authority over the establishment of mixing zones; however, such determinations are still subject to EPA's triennial review of State regulations. Therefore, actual changes in bacterial mixing zones may

not occur, as further discussed below].

EPA filed an appeal to the 8th Circuit Court, and it was denied “en banc” on July 10, 2013. The legal term “en banc” means that all of the 8th Circuit judges contributed to the decision – not just a single or a portion of the judges, so the case at hand was considered to be especially significant by the Court.

Follow-up 4-State GA discussion with representatives from EPA Headquarters (EPA HQ) and the State attendees can be summarized as follows:

- It is EPA HQ’s current contention that the Court ruling will only be binding to the 8th Circuit States (which includes the seven states of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota). Therefore, Kansas within EPA Region 7 is not included.
- It is also EPA HQ’s contention that the ruling does not undercut general bypass provisions per se – it has been in the EPA reg’s since 1984 and did go through the necessary due process requirements that the Court was concerned about. Permits still need bypass provisions at least as stringent as what the EPA reg’s say; and that permit Fact Sheets should have a clear identification of the treatment train that is going to be used in both dry weather and wet weather operations. This is where the State criteria will really become important in terms of helping EPA figure out what the appropriate treatment train is. It was made clear that permits are not to have internal permit limits on wet weather treatment, so EPA will be looking at end-of-pipe treatment and permit limits that are consistent with Secondary Standards and WQBELs.
- EPA HQ emphasized that the States will have to deal with the situation on a case-by-case basis. Under NWEA questioning it was acknowledged by EPA HQ that State-imposed requirements can exceed those imposed by EPA. State representatives indicated that bacterial mixing zones will not likely be permitted. States also have direct authority over construction permits, which deal directly with process design of all WWTP components. MPUA noted that no one in Missouri has yet come forward with a construction permit application for blending. . .with an emphasis on “yet”! MDNR stated that Missouri has adopted a definition for blending that that does not consider it to be a bypass.
- There was speculation by non-regulatory attendees that the ruling could certainly have national implications, even for other Federal programs, since the 8th Circuit ruling would be expected to be cited as representative case law for similar litigation in other States. It has been estimated that the potential cost savings as a result of the ruling against EPA could be over \$200 billion nationwide and \$150 billion within the 8th Circuit States. MPUA mentioned that the impact for Missouri could be on the order of \$697 million.
- EPA HQ will be urging States to take the lead on requiring representative internal water quality monitoring of secondary treatment and non-secondary treatment processes in order to properly evaluate wet weather impacts to the receiving body of water. There is a recognized need to redefine secondary treatment and what constitutes a design storm event or representative high flow frequency.
- EPA HQ acknowledged that “they don’t have everything figured out yet.” They will be reviewing permits on a case-by-case basis; how I/I problems are being managed; and will be looking for a more holistic approach to managing the utility in question.
- IAWEA posed the question as to what should we all be doing to move forward? WEF Headquarters suggested that this is an opportunity for a national dialogue and has a wet weather committee that is working to provide a framework to have national discussions on wet weather issues. The City of Kansas City, MO attendees also urged a national dialogue on this very important subject; and EPA HQ acknowledged that such national dialogue would be very useful.

- More discussion followed during the lunch break just prior to EPA HQ representatives having to get to the airport to catch their flight back:
 - NWEA asked how far the 8th Circuit ruling may push other EPA programs that may have developed guidance in a similar manner that wasn't necessarily a formal rule, but was considered the best available at the time. EPA HQ's response was that these kinds of cases are very circumstantial. For the case in point, the reliance on internal letters would be considered a rarity. The difficulty becomes how to articulate requirements to Congress or to the public. Everything that is written is something that can become held accountable. Things become situational, and it becomes difficult to strike a balance. This sometimes almost becomes an incentive to not be clear on certain matters. For the case in point, the Court noted in their opinion EPA's history on this issue, where there was draft guidance in 2003 and again in 2005 and things never became finalized, and that created some "baggage."
 - NWEA posed another question that was considered potentially unanswerable due to political sensitivity: What happens when the President elects to "trump the process" through the issuance of an Executive Order – does that become a legal due process? As a possible example (maybe just a rumor): the issuance of an Executive Order to drive stricter environmental air quality requirements for the coal-fired power industry. EPA HQ's response was that Presidential statements actually become a call to action that usually result in the formation of a committee to investigate the situation – they are not aware of any Executive Orders that have short-circuited the process. [Note: A Fox News report from earlier this year had stated: "Obama said he was ordering the Environmental Protection Agency to create the first-ever carbon emissions limits for existing power plants." In a strict sense, this was not an Executive Order per se, but simply Presidential pressure on a Federal agency.]
 - MPUA stated that they had heard rumors that Nancy Stoner of EPA had worked personally on Missouri's water quality standards rule (not happy with some "exemptions language"). EPA HQ response: No knowledge of that. A follow-up question: Are other EPA Regions having as much difficulty with wet weather issues as Region 7 and are there things that we can learn from them? EPA HQ response: Yes, there are a number of EPA Regions that have wet weather issues; particularly those associated with CSOs. In terms of a learning process, there are emerging technologies like Actiflo™ (ballasted floc system) that is producing results that would be comparable to secondary treatment – on the technology front things are moving forward.
 - IAWEA: What should we be doing differently (instead of frequent, time-consuming, and expensive lawsuits)? Anything learned by EPA from the 8th Circuit decision? EPA HQ response: There is an opportunity to look at a suite of options, the expectations, and what is needed to protect water quality and public health; and how that can play into and fit the regulatory context and to determine if these are reasonable solutions.
 - KDHE: Does EPA HQ see a wet weather rule coming forth in the next few years? EPA HQ response: Given all the analyses needed, developing the cost impacts, OMB review and public comment, probably not within the current Administration. There is a need for a shorter term solution that can later be embodied in a longer-term effort.
 - Attendee question (representation not discerned): How does the 8th Circuit ruling play into the need for clarifications on various other regulatory matters? EPA HQ response: In some ways it has had a chilling effect on attempting to respond to questions on differences between policy and regulatory requirements, and this tends to bump things down to case-by-case decisions rather than setting more universal priorities.

- MPUA commented that they agree with EPA HQ's statements – it becomes a challenge for EPA to remain open - nobody else in the country is doing what we are doing here [in our 4-State GA Meetings] to openly discuss issues.
- Applause ensued for Glenn Curtis' incredible homemade brownies and EPA HQ's attendance!

Nutrient Issues (IDNR and IAWEA presentation)

PDF File References:

- Adam Schnieders, IDNR: "Iowa Nutrient Reduction Strategy ACWA (10-22-13)".
- "Greg_Sindt_Hand-out_20131125105921.PDF": "Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater, 2013," EPA 822-R-13-001, April 2013.
- Other Supplemental Info Available for Distribution:
 - "EPA_Flexibilities-for-States-Appling-EPA-s-Ammonia-Criteria-Recommendations_820-F-13-001_Apr_2013.PDF".
 - Toolkit of Resources to Provide States with Flexibility in Adopting and Implementing Numeric Nutrient Criteria; website link: <http://www2.epa.gov/nutrient-policy-data/toolkit-resources-provide-states-flexibility-adopting-and-implementing-numeric>.
 - "EPA_Mussel_Survey_Methods_800-R-13-003_Aug_2013.PDF".
 - "EPA_Proposed_WQS_Regulatory_Clarifications_Federal_Register_09-24-2013.PDF"
 - "EPA_Guiding_Principals_for_Developing_Numeric_Nutrient_Criteria_Webinar_09-13-2013.PDF".
 - Website link: <http://www2.epa.gov/nutrient-policy-data/what-epa-doing>.

State Nutrient Reduction Strategy (IDNR presentation)

Iowa is progressing on its well-publicized Nutrient Reduction Strategies with an overall State goal of achieving at least 45% TN and TP reduction between point and non-point sources in concert with the overall Gulf Hypoxia goal set by EPA. Basic team:

- Iowa Department of Agriculture and Land Stewardship (IDALS) has been working with IDNR and has led the development of non-point source (NPS) strategies. IDALS is Iowa's Hypoxia Task Force representative.
- Iowa State University College of Agriculture and Life Sciences has taken the lead for NPS science assessments.
- IDNR is taking the lead for point-source (PS) reduction strategies. IDNR has formed a technical workgroup to provide regular nutrient load estimates.
- There is a Water Resources Coordinating Council (WRCC) consisting of representatives from 19 different state and federal agencies that is chaired by the Iowa Secretary of Agriculture, who has helped champion the cause. The WRCC has been tasked with organizing workgroups to discuss strategies, coordinate with NGOs and local watershed groups, provide annual reports on nutrient reduction progress, and review and update the strategy annually.

IDNR's general nutrient reduction strategy is to achieve nutrient load reductions through technology-based actions, while continuing to assess and evaluate nutrient water quality standards. From the beginning, it was necessary for PS and NPS contributors to acknowledge the nutrient enrichment problem; recognize that traditional approaches are not workable (e.g. cost and technically); there has to be a willingness to do something now to make progress; and there needs to be practicality in program

implementation. As a result of all the meetings and work to date, there has been increasingly good cooperation among farmers and representatives from IDALS. The new slogan is “Nutrient reduction is voluntary but not optional.”

On the PS side of things, there are 102 major municipal WWTPs (56 activated sludge facilities, 36 fixed film facilities, and 9 aerated lagoon facilities); 29 major industries (10 of which have nutrient issues, and 17 minor industries with biological treatment for process wastewater, for a total of 148 dischargers of concern; 130 of which are expected to have significant nutrient loads. The major municipal dischargers are those that discharge more than 1 MGD, and this group contributes approximately 80% of all municipal wastewater and represents 55% to 60% of the entire State population.

The PS targets for TN and TP are 8 mg/l and 1 mg/l, respectively, based on average annual flows. These are technology-based limits, but there are flexibilities. The basic implementation strategy is:

- Permittees are to first submit a feasibility and planning study within the first two years. Five PS dischargers have new permits and have already begun this process.
- IDNR will then review the study, a State-enforceable construction schedule (not a compliance schedule) will be established on a case-by-case basis, the NPDES permit will be amended accordingly, but the limits will not actually be established within the permit until there has been a one-year actual performance evaluation after the improvements have been placed on line.

EPA R7 has been supportive of this approach. The PS program is intended to provide a regulatory certainty for the permittee for a period of 10 years and will include economic affordability considerations and an opportunity to fine tune the goals. [Note: As an example of important program flexibility discussed at last year’s 4-State GA Meeting, a community with a high industrial loading of nutrients may not actually have treat down to the target numeric limits if the overall State PS percentage reduction goals can be met or exceeded.]

IDNR has estimated that current PS loadings are 18,300 tons/year TN and 2,900 tons/year TP, and that after program implementation those levels should be reduced to 7,300 tons/year TN and 730 tons/year TP. This has led to a conclusion that a 2/3 to 3/4 PS nutrient reduction is possible. These results must be then rolled up for comparison to the overall release of nutrients from the State. The total portion of PS nutrient loading is estimated to be 8% of the TN and 20% of the TP, and with conservative program implementation assumptions, the overall State-wide PS loading would be reduced by 4% TN and by 16% for TP.

On the NPS side of things, it was noted that 92% of the TN and 80% of the TP comes from NPS contributions. Therefore, coupled with the PS reductions, the overall NPS reduction targets become 41% TN reduction (= 45% overall goal – 4% PS reduction) and 29% TP reduction (= 45% goal – 16% PS reduction).

IDALS and Iowa State University have developed a sophisticated GIS-based model to evaluate potential NPS nutrient reduction based on various topographic and soil parameters and candidate improvements in land use practices. It was recognized that a combination of such improvements will be needed to achieve the target TN and TP reductions. Various scenarios were considered (but did not constitute recommendations). The estimated initial NPS investment cost would be in the range of \$1.2 to \$4.0 billion. On an estimated annual cost basis the NPS program would cost \$77 million to \$1.2 billion per year to cover the investment cost, increased operating costs, and decreased profits. The

good news is that scientific evaluations have suggested that 45% nutrient reduction is possible and in an affordable way, but it will still take a long time.

To implement the NPS program, the basic approach is to prioritize the watersheds within one year, set goals for the high priority watersheds, establish State and watershed baseline loads, scientifically evaluate alternatives using the land use model, and coordinate the application of any available public funds to the highest priority watershed. The recognized difficulty will be how to measure program success and how to establish proper metrics to do so. Water quality monitoring will be key and will need to consider “lag effects.” This on-going assessment process will take a long time.

In terms of progress, the program has been finalized and has been in place since the end of May 2013. The supporting agencies are staffing up to support the program. The goal is to issue 20 new PS permits per year. There was over \$20 million appropriated last year to get the Nutrient Reduction Strategy implemented. A part of the appropriation has been for cost sharing on cover crops for 1,100 farmers, and all 99 counties in Iowa are participating. Cover crops sequester the nitrogen over the winter period, which decreases the nitrogen demand for the following year, so there can be some significant cost savings. In addition, some of the new radish type cover crops have been used, which also help aerate the soil when the soil is plowed in the spring. There have also been demonstration projects. Because cover crops are such an important strategy, this helps prevent crop areas from being taken out of production. Over 120,000 acres of farm land will be involved with the new cover crop strategies.

A comment from KWEA/MWEA was that the strategies will provide long-term benefits, but one of the inherent problems is that the phosphorus content in the sediments of the major river systems is so high that it may take 30 to 50 years before any benefit is actually realized with respect to the Gulf Hypoxia issue. IDNR said that’s why it’s so important to measure progress and assess the program. IAWEA commented that an important aspect of the program is the positive change in attitude between the PS and NPS source representatives, as opposed to what would have happened with a heavy-handed regulatory approach.

New Mussel/Snail Rule for Ammonia (IAWEA presentation)

There was considerable discussion about the new mussel/snail rule for ammonia, which was released this fall after a lengthy development process. The first draft was released a few years ago and included “mussels present or absent” and separate sets of acute and chronic criteria. In the meantime, a sensitive snail was added to toxicity considerations. The final criteria does not have a separate section on mussels present or absent for acute and chronic criteria – there is just one set of acute and chronic criteria. It was interesting to note that there was no public comment period after the first draft, despite significant changes being made. The criteria released in the final draft were less stringent than the first draft (which had a mussels present provision). There is dependency on pH and temperature as before. The final criteria reduce pre-existing limits by about one-half but are significantly less stringent than the originally proposed rule.

With respect to the above referenced EPA “Flexibilities Document,” which was released at the same time as the new ammonia criteria, IAWEA asked EPA Region 7 (R7) if they are serious about mussels/snails “present or absent” in applying the water quality standards. The “Flexibilities Document” includes considerations for species that should be present at the site on a site-specific basis. Therefore, the whole issue about mussels present or absent could be re-opened. EPA R7 acknowledged that haven’t heard one way or the other, but with respect to conversations with the Fish and Wildlife Service, the answer to the question above was a qualified “yes,” but there are inherent problems proving

mussels/snails are absent due to possible pre-existing impairments due to high ammonia. In talking to freshwater biologists, IAWEA noted that the tough question is whether or not there are other factors that may affect mussels/snails presence or absence and how we should spend our money on the environment - similar to Integrated Planning – where should we spend our money first?

Other discussion centered on whether or not variances could be granted to permittees to help accommodate needed WWTP improvements for the new ammonia criteria with respect to affordability; realizing that long term there is a need to be in compliance with water quality standards. The “Flexibilities Document” even mentions the possibility to simultaneously issue multiple discharge variances similar to what has been done in Wisconsin for chloride standards. EPA R7 noted that there are four EPA Regions in the country that have never issued a variance, and no variances have been issued in R7. EPA R7 stated that mercury is another contaminant that may work well with a multiple variance approach, and they are now working with EPA HQ on that. There would be value in come up with a template to classify dischargers having the same problem - there is no use in communities having to individually go through the same permitting process. There are a lot of legal issues and timing problems but EPA is hoping that needed information can be routed to them to allow a quicker turn-around time and consideration for variances. The group of dischargers having aerated lagoons would be a good example of those where variances may be useful, because they are going to be in trouble in terms of a known lack of reliability in being able to consistently meet the new ammonia criteria.

IAWEA also noted from the “Flexibilities Document” that States may remove “designated uses” or sub-categories of “designated uses” if attainment is not feasible or affordable, but this comes full circle back to affordability. Going further, it would seemingly be possible to designate a stream segment as being “ammonia limited.” EPA R7 noted that affordability was only one of six factors that must be considered for water quality criteria, but certainly affordability is the most prevalent issue; especially where there are small communities with small lagoons with much of the population on fixed income, a mechanical plant that may be able to meet the water quality standards may simply not be possible due to lack of money.

MWEA asked EPA R7 if variances protect against third-party lawsuits. In response there was uncertainty expressed. But, EPA HQ noted that on the Federal level such lawsuits can always happen, but that only parameters specifically stated in discharge permits are enforceable – not the water quality standards themselves. A variance approved by a State would become a form of a water quality standard that could still be challenged in court against the State or EPA, but a “permit shield” would apply to the discharger.

Getting back to the mussels present or absent issue, KWEA noted that there are likely stream segments (like in large rivers) where a lack of habitat may determine whether or not mussels/snails can be present, and that maybe there can be some “flexibilities” provisions for special mixing zones. EPA R7 noted, however, that they will necessarily have to engage the Fish and Wildlife Service on such determinations and there could be complications.

KDHE encouraged everyone to take a look at EPA’s new proposed rule (September 4, 2013) on “Water Quality Standards Regulatory Clarifications”. (See “Other Supplemental Info” reference above). One of the options for establishing a variance would be to create a permit limit without necessarily having to establish a water quality criterion. This then could be recognized as the best that could be accomplished for a particular receiving body of water. Comments are still being received for this proposed rule, so if this sounds like a good approach, then it would be prudent to submit comments accordingly. EPA HQ said that approach is intended to be a clarification on what is presently available; not something that is

new.

NWEA added that some of these considerations may force the States to go back and update Use Attainability Analyses (UAAs) in order to re-establish designated beneficial uses and how some stream segments are parsed for regulatory purposes; some of which may depend on habitat influences. But past experience has demonstrated that the process takes a lot of work and is very expensive and time consuming. KDHE reminded the group that the proposed rule states that what applies during a variance for a designated use or numeric criterion is only intended to provide an interim condition. Such conditions need to be rolled back into the permit to keep them maintained as the “highest and best use”. IAWEA suggested that where compliance is already been achieved, it wouldn’t be worth the staff time and expense to pursue UAA efforts, and NWEA quickly added that such studies can cut both ways, without any guarantee of success.

EPA R7 speculated that the new water quality standards clarifications rule may be coming out in May 2014, but, of course, there is no guarantee for that. WEF HQ is hoping that they can get the comments period extended from December 3, 2013 to early January 2014, which may extend release of the rule to early summer.

IAWEA noted that the proposed rule affirms the use of mixing zones, and noted that rapid diffuser systems have had good application for complying with a water quality standard. In certain cases, fresh water dilution may be an option. Along with dilution options, there should be considerations for flow variable limits where storage provisions can be implemented. EPA R7 sees a lot of concerns for flow variable limits, but there is nothing that prohibits considerations for such limits on a case-by-case basis.

MPUA stated that there are 406 lagoon systems in Missouri; none of which can even meet previous ammonia standards and certainly not the new ones. Affordability is going to be a big deal – an estimated \$10 to \$20 billion impact in comparison to the total State budget of \$26 billion. Even chlorides will be a big issue. All of this will require huge increases in power demand and will impact greenhouse gases.

KDHE stated that they have 120 mechanical plants. Kansas has had nitrification-denitrification improvements in those plants for almost two decades. Based on past performance, it has been somewhat of a surprise that only 6 of these would be expected to have problems with the new ammonia rule. They have pretty much eliminated all of their aerated lagoons (by going to mechanical plants), but facultative lagoons will have problems at certain times of the year. They plan to place facultative lagoons into a multiple discharger variance classification for a 10-year period, but they still need to establish a threshold for population and median household income for affordability. But there will be others “around the fringes” that will be difficult to handle. KDHE has very good monitoring data and has no streams listed as being impaired for ammonia under existing criteria. Seasonal irrigation from facultative lagoons may help to minimize impacts, as well as recognition that many of the smaller communities will have declining populations. They will redefine certain stream segments over a distance of 200 feet serving facultative lagoons under site-specific criteria accordingly. In response to a question from IDNR about whether mussels were assumed to be present in KDHE’s various stream segment evaluations, yes, KDHE did consider mussels to be present but also considered cases where mussels may be absent. But even with mussels present, it was the obvious lack of affordability that will drive the variance process and provide a path forward.

IDNR stated that they have not yet made detailed considerations for ammonia criteria similar what

KDHE has done for the 550 lagoons (about 80 of which are aerated lagoons) that exist in Iowa, but they are paying attention to KDHE's process. IDNR is not going to be in a rush on this issue, and have not yet explored all options, because there are some delicate considerations to deal with. IAWEA noted that when the first draft ammonia proposal came out, that the Iowa Environmental Council immediately expected full compliance with those criteria, so pressure can be expected that will come forward on the new criteria.

Integrated Municipal Stormwater and Wastewater Planning Approach and Other Wet Weather Issues.
(City of Springfield, MO presentation)

PDF File Reference: "Springfield_MO_Integrated_Plan_Presentation_Steve_Meyer.PDF"

The City of Springfield was happy to learn that EPA was considering affordability in stormwater issues and that EPA recognized that every city had unique challenges and needed to set priorities. Since 2009 EPA has continued to revise and improve their framework. EPA conducted listening tours in 2011 and 2012 and issued a FAQ's document in 2013 [July 15]. In consideration of EPA's Integrated Planning framework, Springfield and nearby cities within the three-county area around Springfield desired to start their own local integrated planning program. There was a desire to gain near-term and long-term flexibility. The group developed six tenets for their Plan:

- It must be affordable to their citizens.
- It must be effective and address the issues.
- It must ensure that all the communities are being treated fairly.
- It must be attainable.
- It must be measurable in terms of success; particularly for full compliance with regulations.
- It must be adaptable so that improvements can be progressively made.

The initial planning effort brought in considerations for all obligations, not only wastewater and stormwater, but also drinking water, air quality, infrastructure, and solid waste issues. So far the Plan appears to be well received by the communities. The next step is to figure a way to implement a Plan that looks at all environmental issues holistically. They intend to use 4 phases of Plan development:

- Assessment: Answer the question of "where are we now." This is where data gathering is needed to assess the current status of environmental resources and to encourage communications to pool those resources that relate to water quality, air quality, and sustainability issues.
- Vision: Determine what results are needed.
- Tactical: Prioritization of needs and developing potential solutions.
- Adaptive Management: Constantly measure success against previous assumptions and re-prioritize.

They realize that this will involve an iterative process. Other factors include: Evaluation of financial capability; identification of water quality impairments and sources; cost effectiveness of alternatives; and allocation of resources.

Interestingly enough for their Phase 1 work, they discovered through GIS-based analysis work that, because of their Ozarks underlying karst (fractured bedrock) geology, they have come to believe that it is highly likely that sinkholes and springs around the metro area are transporting lead, chromium-based

contaminants, and bacteria across the City into the nearby streams. Dye tracer testing has been used. Also they are looking for leaking vitrified clay sewer pipe and septic tanks, stream bank erosion, and sediment transport containing contaminants. So they are busy confirming water quality impairments and sources.

Financial capabilities of the communities are key in their minds. They know that affordability includes many factors other than just EPA's 2% of MHI. They are also including affordability indicators developed by other organizations, such as WEF and NACWA. Some of the other affordability indicators include income levels and distribution, poverty rates, unemployment, and housing cost.

They have developed a matrix of problems and possible causative factors and are attempting to establish financial priorities and cost-effectiveness of candidate alternatives for correction. They are looking at a 20-year window for all planning/technical data and expect to be engaged in 9 more months of planning efforts before moving into regulatory considerations. Every step that they take seems to be getting harder and harder.

They definitely want "green solutions" and compliance within their streams. Springfield has a population of 159,000; their metro area has a population of approximately 240,000 and quickly growing; and there is a high level of tourism.

There is a need to define future land uses, population, and WWTP loadings versus capacity, etc. They recognize that it will be vitally important to keep MDNR and EPA engaged in their lengthy planning process to maintain momentum and to move toward a flexible compliance schedule. They feel that they are making progress and that there is a spirit of cooperation among the leadership that didn't exist three years ago. For example, there are two TMDLs in the area now, and they need the county's help to help resolve those.

They have serious stormwater funding issues, and their stormwater taxes expired last July. So they formed a Stormwater Task Force that is looking for additional tax revenues. The citizenry have traditionally expected low taxes. It is important for the citizenry to be told what they will "get" out of the plan. Therefore, the planning leadership is being as transparent as possible, because they have to "sell this," and it won't be easy - they just had a County use tax rejected.

Question from WEF HQ: How does one avoid having new requirements being added down the road by the regulatory agencies? Is the plan being prepared with prioritizations and then to be presented to MDNR and EPA, or is consultation with those agencies being used to help develop the plan? Response: They have been actively engaging MDNR, EPA R7, and even EPA HQ during the plan preparation. The group doesn't want to be "down the road too far" and suddenly receive requests for different plan direction. It is vitally important to work with the regulators.

Question from KCMO: How has the group been working with the planning departments with respect to zoning and possible changes in future land use and how that may fit into the plan? Response: Yes, they spent three months alone just looking at population projections, and it's important to know what direction things will be taking. They are now looking at the 2030 time frame and are looking to upgrade their WWTP digesters to take more loading, and to make sure that they will have the necessary capacity down the road. And with the sinkholes around the area, they have to use their property wisely. Prior to this time, there wasn't as much emphasis on stormwater infrastructure. Approximately 75% of stormwater infrastructure is over 50 years old and their Stormwater Task Force is shooting for a 200-

year service life.

EPA/States Upcoming Calendar of Priorities (working lunch)

PDF File Reference: "EPA_R7_Glenn_Curtis_Kearney_NWEA_Slide_Show_110613.PDF"

- **EPA R7:** EPA R7 priorities are very diverse and the list is lengthy. It is recommended that the reader separately obtain the above referenced presentation slides that Glenn Curtis provided after the 4-State GA Meeting that had been previously presented at the 2013 NWEA Fall Conference in Kearney, NE.
 - Nutrient issues have remained a high priority, and they have been working with Iowa and Kansas in their nutrient reduction strategies. They are trying to promote the other States to work in a similar fashion.
 - There are discussions as to whether there will be a new stormwater rule or not and are certainly willing to work with communities on stormwater needs, and there have been a lot of discussions on "green" infrastructure and SRF funding for that purpose.
 - There have been recent discussions on climate change with respect to power plants and the 316(b) impingement and entrainment rule changes for steam power plants coming up – the deadline was originally for November 2013, but there will be more time allowed for that. [Note: 316(b) requirements deal with power plant river water intakes].
 - There were some updates regarding CAFOs. In 2008 there was a requirement to apply for a permit if there was a potential to discharge. However, the court vacated that rule, so permits will only be required if there will actually be a discharge. EPA R7 is still working on how to interpret that and deciding how to discern "potential" discharge versus that which may be considered to be "actual."
 - EPA does have a list of new water quality criteria that they will be working on: ammonia, selenium, chloride, and several others that will be coming out for public comment. Some parameters are still in a literature review stage. [Reference 2013 NWEA presentation slides for the full list].
 - They don't have any more news on how the Federal budget may affect EPA programs. The 2014 budget is pretty much already in place, but if the Federal sequester continues, there is a schedule for some personnel cuts in 2015 similar to what has been requested for the Department of Defense. They are hoping for flexibility for where such cuts can be made.
 - IAWEA Question: Any idea when the revised draft chloride guidance criteria will be coming out? Early 2014? Response: Not sure. WEF HQ added that possibly in the February-March 2014 time frame, the chloride issue may go out for external peer review.
 - The draft electronic reporting rule came out this year for public comment and may be in final form in later 2014 or early 2015, and the States will have to start looking at how they can accommodate that change their own regulations, which may also roll into the permits. IAWEA added that if the States were not ready to accept the program, the draft rule said that dischargers would have to report directly to EPA.
- **IDNR:** Nutrients, including trading initiatives; permit backlog reduction; trying to work some "bugs" out of their new databases; trying to develop new procedures for waste load allocations; reviewing State rule-making process; working on stormwater general construction permits and topsoil preservation requirements – similar to SUDAS requirements; working with a standard EPA audit on permitting, enforcement, and a memorandum agreement for delegated authority

to IDNR that was last done in 1978; and they intend to “clean up” a number of rules.

- KDHE: Working on ammonia criteria and TP TMDLs (working on procedures); CAFO manure exporting rules (for hauling off-site); trying to stay ahead of the steam electric power rule – a lot of work ahead on that; they are keeping an eye on the “Waters of the U.S. Rule” and the potential incorporation of ephemeral waters for arid portions of the State and how that may affect downstream impaired waters – this may be coming out in the upcoming year; will issue an MS4 general permit after the 1st of the year – have received positive feedback from the regulated community; keeping the Department adequately funded has caused a lot of concern; they have a legislative bill introduced to capture NPDES fees [that have been diverted to the State General Fund]; and with the Federal sequestration there could be a 45% cut to SRF funds, and in Kansas there may not be so much of an impact on loans as there may be in operational expenses. NWEA asked if there was concern for ephemeral streams and the “Waters of the U.S./State” issue that discharges that essentially comprise the entire stream will force discharge limits to potentially meet groundwater water quality standards. Response: By definition in Kansas, groundwater is already included with “Waters of the State,” and KDHE already deals with such issues where applicable, so there should be no change in that regard.
- MDNR: Work with State law for all permittees to define their affordability criteria for their permit renewals; DMRs are now being done on-line and is going smoothly; nutrient TMDL variances are planned for cases where the TMDLs and waste load allocations indicate requirements below technology limits; working on MS4 permits; modify construction permit rules - legislation has exempted industrial applications and for CAFOs, but still have to acquire an operating permit, meet design criteria, and be verified through on-site inspections; there is a directive to set internal priorities on programs; they are packaging all NPDES permits by watershed in anticipation of nutrient trading (permits will be synchronized on their permit effective dates) – this will be a 10-year effort and some permits may have to be re-issued for interim shorter durations or extend some permits in order to synch up, and this has created some permitting backlog; similarly, they will be synchronizing MS4 permits; updated water quality rules to include more fishable/swimmable stream designations; and have been working with stakeholders to obtain an increase for permit fees through the Legislature (still leaving a \$900,000 shortfall in funding, but much less than over \$2 million which previously existed).

In response to a question from IAWEA on Missouri’s NPS nutrient reduction strategies and trading, MDNR responded by saying that they have been dealing with NPS nutrient issues for a long time and their soils management program is very robust. Only about 2/3 of the State is cropland, but they “floated out” a voluntary nutrient trading program with 1,500 landowners participating. The State has been providing \$20 million in annual cost-sharing for agricultural management programs for over 40 years. They are also trying to streamline land disturbance permitting operations with electronic record keeping.

- NDEQ: Update water quality standards next year to include new ammonia criteria; develop pretreatment framework, including a new application form; their IT department is getting ready for electronic DMR submittals; compliance monitoring for enforcement strategies will be reviewed with EPA shortly; and AWIN planning for affordability evaluations and where to spend dollars first is moving ahead – they have hired a new employee to direct the program.

Affordability and Funding Priorities (NDEQ presentation)

PDF File Reference: "NDEQ_NWEA_2013_Fall_Conference_AWIN_Presentation.PDF"

This discussion keyed into the AWIN Program (Assessing Water Infrastructure Needs). It is recommended that the reader separately obtain the above referenced slides used in the presentation. The following are just a few of the key points:

- A map of the Central States region and specifically for Nebraska showed an overwhelming amount of negative population trending within villages, small cities, and even within definable sectors of larger cities. Approximately 2/3 of the Nebraska counties are losing population – many of the other states have similar problems, and this issue is poorly understood by the rest of the country.
- NDEQ plans to use the AWIN tool to set realistic compliance schedules.
- It will be difficult to plan and design for negative growth and update permits accordingly.
- At the time of this writing, WEF has already sponsored a webinar on affordability, but it was mentioned in advance by NDEQ as being desirable to participate in.
- An affordability calculation spreadsheet is available.
- Open discussion:
 - MPUA/MWEA added that the USDA grants and SRF financing and bonds may be in jeopardy, and NDEQ acknowledged that concern also. NDEQ does expect that communities affected by affordability issues with respect to wastewater facilities design bring in their facilities plans for how they intend to handle things.
 - KDHE said that they have also been buying some bonds back in an attempt to help with leveraging the financing for tough affordability situations. They, in turn, have to be cognizant that they cannot be in a position of default either [due to State budget shortfalls]. They are looking at the adequacy of the community's sewer use rates and their long-term financial stability in order to help insulate the State from risk of default. There are some limited grant funds available.
 - IAWEA recounted the old EPA grants program where the larger cities received the grants first. As a parallel to the SRF program, when everything seems to be happening at once, there could be a tendency for the larger cities to once again receive the majority of the SRF funds. EPA R7 countered with the fact that they have seen States try to have a funding balance between larger and smaller cities for SRF funding.
 - WEF HQ added that one of the problems from an EPA perspective is that if SRF funds are not being fully utilized, then it will be difficult to get more SRF allocations.
 - MPUA chimed in that they are again doing an assessment on affordability in Missouri. Since May 2013 there have been 149 draft and final permits issued in Missouri. So far MPUA has examined 73 of those permits and 40% of those are over the 2% MHI affordability criterion. Six examples were cited where sewer rates ranged from roughly 6% to 26% of MHI. They will be assessing the entire list of permits [and they are conducting another large sewer rate study.]
 - MDNR qualified the high end of the MHI list – some of these instances involve rural subdivisions that are connecting to regional treatment facilities where the cost for doing so is higher than for a normal municipal situation. So, MDNR is trying to sort out what constitutes representative affordability for all the various situations and permit cycles may be extended out as much as 10 years.
 - NWEA asked what is available for expanded affordability criteria, other than just the MHI criterion. Response from WEF HQ: There is guidance from EPA that was a part of the

CSO program that has progressively developed with NACWA's input to include a calculation spreadsheet. This affordability tool was presented at a U.S. Conference of Mayors meeting.

Nutrient Reduction Strategy Progress Report (KDHE presentation)

PDF File Reference: "Mike Tate Hand-outs WEF Govt Affairs 2013.PDF"

Again, the above referenced hand-out that should be separately obtained by the reader. The following are some of the key points:

- They are shooting for a TN limit of ≤ 8 mg/l; basically for towns $\geq 8,000$ population.
- Similarly they are shooting for a TP limit of ≤ 1.5 mg/l. TP is more important than TN for inland waters protection.
- 60 WWTPs will be involved at a projected cost of \$1 billion.
- The USDA has a national water quality initiative for non-point source (NPS) nutrient control. It was speculated that it may be 30 to 40 years before NPS nutrient reduction goals can be met, even with cost sharing efforts.
- They are modeling nutrient impacts from small towns and lagoons.
- KDHE is not planning to build a nutrient trading program, but they can still be approached for that purpose. A major power plant is now trying to move to a trading program.
- KDHE acknowledged that the primary driver for nutrient controls in the State is a need to protect their drinking water reservoirs.

Additional Topics:

EPA HQ: Federal District Court Ruling Ordering EPA to Determine "Necessity" of Nutrient Controls for the Mississippi River Watershed with Respect to the Gulf Hypoxia Situation.

PDF File References:

- "Federal_Necessity_Ruling_for_Mississippi_River_Gulf_Hypoxia_09-20-2013"
- Federal_Necessity_Ruling_for_Mississippi_River_Gulf_Hypoxia_Summary_Article_09-23-2013.PDF"

[Background: In 2008 a number of NGOs along the lower Mississippi River Watershed petitioned EPA to establish numerical water quality standards for nitrogen and phosphorus via the establishment of TMDLs for specific segments of the River and its tributaries. EPA subsequently denied that petition, saying that a variety of approaches to reduce nutrients were in progress and that States were already acting on this issue on a volunteer basis; that it was premature to use its Federal rule-making authority; and that EPA didn't possess sufficient resources for enforcing such a program over such a large area of the nation. Consequently, NGOs filed a suit in 2011 charging that EPA's denial of the prior petition violated the Federal Administrative Procedures Act, because the agency didn't explain why their refusal to issue regulations was not "necessary" to meet the requirements of the Clean Water Act. Finally, a Federal judge in New Orleans District Court ruled on September 20, 2013 that the EPA must issue a formal finding within 180 days as to whether or not more stringent Federal rules are "necessary" for the control of nutrients into the Mississippi River with respect to the Gulf of Mexico Hypoxia (oxygen depletion) situation.]

Comments from EPA HQ at the 4-State GA Meeting on this ruling and where things may be headed were as follows:

- The District Court also ruled that EPA could consider State progress in its determination.
- The time for filing an appeal has not yet expired, so EPA is still deliberating internally on that question.
- If they don't file an appeal, then the situation will be remanded back to EPA and the petition, and they will have to decide one way or the other. But the court allowed EPA to use a great deal of discretion of determining whether numeric nutrient criteria were necessary.
- IAWEA added a reminder that the older Eco-Region nutrient criteria were very stringent and a continuation of what Iowa is doing is very important. A clarification was also added that the judge noted that it was the State's responsibility to develop criteria. In any case, EPA doesn't intend to jump over any of the State's nutrient management efforts. If EPA makes the determination that nutrient criteria are "necessary," the States would "go first," but it would be under an accelerated time schedule.
- EPA doesn't feel that "one size fits all" on this issue, and they pretty much know what they want to see from the States, so that is the path forward.

Discharge of Water Treatment Plant Residuals

PDF File Reference: "EPA_WTP_Residuals_Management_Report_EPA-820-R-11-003_Dec_2011.PDF"

Prior questions were posed by NDEQ on this subject in preparation for this 4-State GA Meeting (read off form prior correspondence received by NWEA):

- Water treatment plants along large rivers such as the Mississippi and Missouri River are starting to receive NPDES permits. It seems that each State is taking their own approach to handling the required analysis for permit writing.
- How are the States assessing the effects of residuals on water quality, the benthic community, sediment aggradation, and aesthetics?
- How does EPA suggest it should be done?
- Are States able to complete, in a timely manner, BPJ analyses, which seem to require more effort from State staff than a typical NPDES permit?

The questions above and the ensuing discussion was primarily directed at regulatory problems and significant cost implications from the discharge of WTP residuals (primarily lime sludges). A number of cities on the Missouri River system are currently battling such difficult issues. Study efforts have continued without a definitive end result, but some issues seem possible to resolve. Some aerial and ground observations have clearly shown WTP discharge plumes in the River, which has raised concerns by EPA and various NGO stakeholders.

A case was mentioned by NDEQ in the Platte River in Nebraska where the U.S. Fish and Wildlife Service observed a strange reversal in the progression of tagged pallid sturgeons swimming upstream when allegedly they approached a WTP residuals discharge plume and quickly reversed themselves and headed downstream. [Note: the WTP discharge in question was on the opposite bank of the River from where the pallid sturgeons were being tracked, but that did not mitigate the concern].

EPA does have guidance for these issues, but they have not promulgated effluent guidelines. Consequently, Best Professional Judgment (BPJ) evaluations are very difficult and are being handled on a case-by-case basis. Alternative sludge dewatering and disposal creates significant economic burdens

and raises serious questions about end user affordability and practicality. The larger cities would have a long way to haul sludge, assuming that they can even find a suitable disposal site. Bottom line: This issue will be slow to be resolved.

Meeting Wrap-Up

The 4-State GA Committees have been extremely active and will continue to do so. As a cohesive group, we collectively urged EPA HQ and WEF at the close of the meeting to use our annual 4-State GA Meetings as a model for the rest of the EPA Regions. EPA HQ and WEF HQ attendees openly liked that idea. All attendees were very pleased with the content and outcome of the 2013 meeting, and we are happy to serve our own MA's and address other national inquiries.

[As a side note, NWEA's GA Committee helped to convince WEF HQ via a written letter to include the Iowa League of Cities case into the WEFTEC 2013 Conference with very little advance notice by emphasizing the enormity of the potential impacts across the nation. WEF HQ was urged to assume a key role in dealing with the outcome and implications from the 8th Circuit Appeals Court ruling. WEF did subsequently step in and arranged for a regulatory session presented by various legal firm representatives on the Iowa League case and others, and the session was very well attended.]

AGENDA

SEVENTH ANNUAL FOUR STATES GOVERNMENTAL AFFAIRS MEETING

EPA Region 7

November 13, 2013 - 10:00 AM to 2:00 PM

- | | |
|----------------------------|--|
| 10:00 AM – 10:10 AM | Introductions, Housekeeping Items, Sign-In Sheet, Audio Recording, and Meeting Minutes
(EPA and Iowa) |
| 10:10 AM – 10:15 AM | Overview of Topics and Basic Meeting Goals
(Iowa as Lead GA Committee) |
| 10:15 AM - 11:00 AM | 8 th Circuit Court Decision Implications: <ul style="list-style-type: none">• Mixing Zones• Secondary Treatment• Blending• Wet Weather Issues• State Programs (Iowa Introduction: Ted Payseur) |
| 11:00 AM – 11:45 AM | Nutrient Issues: <ul style="list-style-type: none">• Nutrient Reduction Strategies for TN and TP• Greg Sindt: Ammonia Toxicity, Snail/Mussel Ruling Update• Non-Point Source Control Progress (Iowa Introduction: Adam Schnieders, IDNR) |

11:45 AM – 12:30 PM	<p>Integrated Municipal Stormwater and Wastewater Planning Approach and Other Wet Weather Issues</p> <ul style="list-style-type: none"> • Springfield, Missouri Program • Implementation Game Plan: EPA Region 7 and States (Missouri Introduction)
12:30 PM – 1:15 PM	<p>EPA/States Upcoming Calendar of Priorities – Working Lunch</p> <ul style="list-style-type: none"> • EPA Region 7 Planned Activities List (similar to last year) • State Updates of Upcoming Priorities (Open Discussion) • Nutrients and Ammonia Multi-Discharger Variances • Mississippi River Basin EPA Court Case Decision
1:15 PM – 2:00 PM	<p>Affordability and Funding Priorities</p> <ul style="list-style-type: none"> • Affordability Criteria Approaches (Municipal and Industrial) • State Funding Priorities – Rationale and Establishing Future Needs • Permits Issued? <p>(Nebraska Introduction)</p>
2:00 PM – 2:45 PM	<p>Nutrient Reduction Strategy Progress Report (Mike Tate, KDHE)</p> <ul style="list-style-type: none"> • Water Plan – Drought Impacts? <p>(Kansas Introduction)</p>
2:45 P.M.	<p>Wrap Up</p> <p>Lead GA Committees:</p> <ul style="list-style-type: none"> 2007: Nebraska/Missouri 2008: Nebraska 2009: Iowa 2010: Kansas 2011: Missouri 2012: Nebraska 2013: Iowa 2014: Kansas – up next!

Please indicate who is coming from your state.

To: Weiss, Kevin[Weiss.Kevin@epa.gov]; Bosma, Connie[Bosma.Connie@epa.gov]
From: Curtis, Glenn
Sent: Fri 11/1/2013 2:21:02 PM
Subject: R7 WEF 4 States Meeting Attendees List
WEP 4 States Meeting attendees.docx
Agenda 4-State GA Meeting 11-13-2013.docx

FYI

See list of attendees to the subject meeting. Also I have attached the agenda - still the same as it has been. Would you all like to comment or promote any changes to the agenda - - - let me know.

I look forward to seeing one or both of you. Let me know when your getting in and what you would like to do. Also if you need help with logistics, etc. You know we moved way south from where we were. And I can help if you would like to stay close to the office or if you would prefer to stay downtown.

Anyway let me know

Glenn

**WEP 4 States Meeting
November 13, 2013**

updated October 31, 2013

ATTENDEES:

1	Ted Payseur	Veenstra & Kimm, Inc.
2	Philip Walsack	MPUA
3	Mike Tate	KDHE
4	John Metzler	Kansas WEA
5	Trent Stober	Kansas WEA
6	Dan Ott	Kansas WEA
7	Susan Pekarek	Kansas WEA
8	Todd Boling	NWEA GA Committee
9	Mike Milius	NWEA GA Committee
10	Gary Brandt	NWEA GA Committee
11	Derek Gardels	NWEA GA Committee
12	Lyle Christensen	NWEA GA Committee
13	Steve Goans	NDEQ
14	Reuel Anderson	NDEQ
15	Donna Garden	NDEQ
16	Pat Rice (tentative)	NDEQ
17	Jon Kenning	NDEQ
18	John Bender (tentative)	NDEQ
19	Steve Myer	Springfield, MO
20	David Nelson	KCMO Water Services
21	Charlie Stevens	KCMO Water Services
22	Terry Leeds	KCMO Water Services
23	Mark Young	KCMO Water Services
24	Claudio Ternieden	WEF
25	Chris Wieberg	MDNR
26	John Madras	MDNR
27	Eric Wiklund	IDNR
28	Adam Schnieders	IDNR
29	Greg Sindt	Bolton & Menk
30	Glenn Curtis	EPA

via conference call:

George Hunt NWEA GA
Pat Nelson NWEA GA

866 299 3188 conference

Ex. 6 - Personal Privacy

To: Weiss, Kevin[Weiss.Kevin@epa.gov]
Cc: Bosma, Connie[Bosma.Connie@epa.gov]
From: Curtis, Glenn
Sent: Mon 10/28/2013 2:07:03 PM
Subject: Region 7: WEF / 4 States Meeting Agenda
Agenda 4-State GA Meeting 11-13-2013.docx

Fyi - see agenda for meeting with 4-states - WEF. Let me know if you or whomever might need help with any other specifics.

Also - would like to talk on 8th circuit direction

thanks

To: Curtis, Glenn[curtis.glenn@epa.gov]
From: Neugeboren, Steven
Sent: Wed 12/18/2013 12:27:30 PM
Subject: RE: 4-State Governmental Affairs Meeting on November 13, 2013 at EPA Region 7: Draft Meeting Minutes

thanks Glenn. hope all is well.

Steven Neugeboren
Associate General Counsel
Water Law Office
U.S Environmental Protection Agency
202-564-5488

Ex. 6 - Personal Privacy (C)

From: Curtis, Glenn
Sent: Friday, December 13, 2013 5:21 PM
To: Neugeboren, Steven; Humphrey, Leslie; Matthews, Mark
Subject: FW: 4-State Governmental Affairs Meeting on November 13, 2013 at EPA Region 7: Draft Meeting Minutes

You guys showed a bounce back to Lyle, so I am forwarding. Hopefully my transfer works.

From: Christensen, Lyle [<mailto:Lyle.Christensen@hdrinc.com>]
Sent: Friday, December 13, 2013 3:35 PM
To: mark.young@kcmo.org; david.nelsen@kcmo.org; Charles Stevens (Charles.Stevens@kcmo.org); Meyer, Steve (smeyer@springfieldmo.gov); acallaway@springfieldmo.gov; Bosma, Connie; neugeboren.steve@epa.gov; Weiss, Kevin; Bagley, Melissa; Curtis, Glenn; Delashmit, John; Dunn, John; Hill, Kimberly; Huffman, Diane; humphry.leslie@epa.gov; Jay, Michael; Lavaty, Ann; mathews.mark@epa.gov; Nix, Tanya; Petruska, Anthony; Porter, Donna; Shields, Amy; Jay Brady (bradyjay@stanleygroup.com); s.hershner@cedar-rapids.org; Ted Payseur (tpayseur@v-k.net); Greg Sindt (gregsi@bolton-menk.com); Schnieders, Adam [DNR] (Adam.Schnieders@dnr.iowa.gov); eric.wiklund@dnr.iowa.gov; Dustin J. Miller (DustinMiller@iowaleague.org); Mike Tate (mtate@kdheks.gov); tawara.lorenzen@jcco.org; susan.peleasele@jcw.org; Stober, Trent; Mefrakis, Refaat (refaat.mefrakis@dnr.mo.gov); chris.wieberg@dnr.mo.gov; fgilzow@mpua.org; Phil Walsack (pwalsack@mpua.org); Reuel Anderson (reuel.anderson@nebraska.gov); (reuel.anderson@nebraska.gov); Bender, John (john.bender@nebraska.gov); garden.donna@nebraska.gov; Goans, Steve (steve.goans@nebraska.gov); john.kenning@nebraska.gov; Todd Boling (tboling@ci.norfolk.ne.us); Gary Brandt (nbengr@gmail.com); Christensen, Lyle; Gardels, Derek; Mike Milius (mmilius@olssonassociates.com); Claudio Ternieden (cternieden@wef.org)
Cc: Hunt, George; Pat.Nelson@CH2M.com
Subject: 4-State Governmental Affairs Meeting on November 13, 2013 at EPA Region 7: Draft Meeting Minutes
Importance: High

To All 4-State GA Meeting Attendees:

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- ☐☐☐☐☐☐☐☐ In doing my audio transcription and other summary work, there was to be no intent to editorialize any of the discussion other than to provide supplemental background information for convenient reference and educational purposes, such as referenced regulatory documents, court rulings, etc. in the various referenced PDF files. The rest of the PDF files were directly provided by the meeting presenters. I have enclosed various portions of the narrative in [brackets] to distinguish such supplemental background information, so I would appreciate your feedback on that or even have you offer additional supplemental information in the form of PDF files that can help to further explain various topics in our discussion.
- ☐☐☐☐☐☐☐☐ There may be a few isolated cases where representation from the attendees (the person speaking) may not have been accurate or known due to hearing limitations in the large room. So, if there are attendee references in error or missing, please make corrections to that effect.

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Lyle r. christensenHDR Engineering, Inc.
pE Senior Project Manager

Professional Associate
8404 Indian Hills Drive | Omaha, NE 68114
402.399.1329 | c: 402.680.0142
lyle.christensen@hdrinc.com | hdrinc.com

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To: Weiss, Kevin[Weiss.Kevin@epa.gov]
From: Bagley, Melissa
Sent: Thur 4/14/2016 2:37:58 PM
Subject: FW: 4-State Governmental Affairs Meeting on November 13, 2013 at EPA Region 7: Draft Meeting Minutes
Fall-Winter 2013 4-State GA Meeting Minutes LChristensen Draft 12-13-2013.docx
4 States Meeting Attendee List 112013.xlsx

From: Christensen, Lyle [mailto:Lyle.Christensen@hdrinc.com]
Sent: Friday, December 13, 2013 3:35 PM
To: mark.young@kcmo.org; david.nelsen@kcmo.org; Charles Stevens (Charles.Stevens@kcmo.org) <Charles.Stevens@kcmo.org>; Meyer, Steve (smeyer@springfieldmo.gov) <smeyer@springfieldmo.gov>; acallaway@springfieldmo.gov; Bosma, Connie <Bosma.Connie@epa.gov>; neugeboren.steve@epa.gov; Weiss, Kevin <Weiss.Kevin@epa.gov>; Bagley, Melissa <Bagley.Melissa@epa.gov>; Curtis, Glenn <curtis.glenn@epa.gov>; Delashmit, John <Delashmit.John@epa.gov>; Dunn, John <Dunn.John@epa.gov>; Hill, Kimberly <Hill.Kimberly@epa.gov>; Huffman, Diane <Huffman.Diane@epa.gov>; humphry.leslie@epa.gov; Jay, Michael <Jay.Michael@epa.gov>; Lavaty, Ann <Lavaty.Ann@epa.gov>; mathews.mark@epa.gov; Nix, Tanya <nix.tanya@epa.gov>; Petruska, Anthony <Petruska.Anthony@epa.gov>; Porter, Donna <Porter.Donna@epa.gov>; Shields, Amy <Shields.Amy@epa.gov>; Jay Brady (bradyjay@stanleygroup.com) <bradyjay@stanleygroup.com>; s.hershner@cedar-rapids.org; Ted Payseur (tpayseur@v-k.net) <tpayseur@v-k.net>; Greg Sindt (gregsi@bolton-menk.com) <gregsi@bolton-menk.com>; Schnieders, Adam [DNR] (Adam.Schnieders@dnr.iowa.gov) <Adam.Schnieders@dnr.iowa.gov>; eric.wiklund@dnr.iowa.gov; Dustin J. Miller (DustinMiller@iowaleague.org) <DustinMiller@iowaleague.org>; Mike Tate (mtate@kdheks.gov) <mtate@kdheks.gov>; tawara.lorenzen@jcco.org; susan.peleasele@jcw.org; Stober, Trent <John.Stober@hdrinc.com>; Mefrakis, Refaat (refaat.mefrakis@dnr.mo.gov) <refaat.mefrakis@dnr.mo.gov>; chris.wieberg@dnr.mo.gov; fgilzow@mpua.org; Phil Walsack (pwalsack@mpua.org) <pwalsack@mpua.org>; Reuel Anderson (reuel.anderson@nebraska.gov) (reuel.anderson@nebraska.gov) <reuel.anderson@nebraska.gov>; Bender, John (john.bender@nebraska.gov) <john.bender@nebraska.gov>; garden.donna@nebraska.gov; Goans, Steve (steve.goans@nebraska.gov) <steve.goans@nebraska.gov>; john.kenning@nebraska.gov; Todd Boling (tboling@ci.norfolk.ne.us) <tboling@ci.norfolk.ne.us>; Gary Brandt (nbengr@gmail.com) <nbengr@gmail.com>; Christensen, Lyle <Lyle.Christensen@hdrinc.com>; Gardels, Derek <Derek.Gardels@hdrinc.com>; Mike Milius (mmilius@olssonassociates.com) <mmilius@olssonassociates.com>; Claudio Ternieden (cternieden@wef.org) <cternieden@wef.org>
Cc: Hunt, George <George.Hunt@hdrinc.com>; Pat.Nelson@CH2M.com
Subject: 4-State Governmental Affairs Meeting on November 13, 2013 at EPA Region 7: Draft Meeting Minutes

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Lyle r. christensenHDR Engineering, Inc.
PE Senior Project Manager

Professional Associate
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lyle.christensen@hdrinc.com | hdrinc.com

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To: Weiss, Kevin[Weiss.Kevin@epa.gov]
From: Bagley, Melissa
Sent: Thur 4/14/2016 2:37:36 PM
Subject: FW: 4-State Governmental Affairs Meeting on November 13, 2013 at EPA Region 7: Draft Meeting Minutes
Fall-Winter 2013 4-State GA Meeting Minutes LChristensen Draft 12-13-2013.docx
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Sent: Friday, December 13, 2013 4:21 PM
Subject: FW: 4-State Governmental Affairs Meeting on November 13, 2013 at EPA Region 7: Draft Meeting Minutes

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Sent: Friday, December 13, 2013 3:35 PM
To: mark.young@kcmo.org; david.nelsen@kcmo.org; Charles Stevens (Charles.Stevens@kcmo.org); Meyer, Steve (smeyer@springfieldmo.gov); acallaway@springfieldmo.gov; Bosma, Connie; neugeboren.steve@epa.gov; Weiss, Kevin; Bagley, Melissa; Curtis, Glenn; Delashmit, John; Dunn, John; Hill, Kimberly; Huffman, Diane; humphry.leslie@epa.gov; Jay, Michael; Lavaty, Ann; mathews.mark@epa.gov; Nix, Tanya; Petruska, Anthony; Porter, Donna; Shields, Amy; Jay Brady (bradyjay@stanleygroup.com); s.hershner@cedar-rapids.org; Ted Payseur (tpayseur@v-k.net); Greg Sindt (gregsi@bolton-menk.com); Schnieders, Adam [DNR] (Adam.Schnieders@dnr.iowa.gov); eric.wiklund@dnr.iowa.gov; Dustin J. Miller (DustinMiller@iowaleague.org); Mike Tate (mtate@kdheks.gov); tawara.lorenzen@jcco.org; susan.peleasele@jcw.org; Stober, Trent; Mefrakis, Refaat (refaat.mefrakis@dnr.mo.gov); chris.wieberg@dnr.mo.gov; fgilzow@mpua.org; Phil Walsack (pwalsack@mpua.org); Reuel Anderson (reuel.anderson@nebraska.gov) (reuel.anderson@nebraska.gov); Bender, John (john.bender@nebraska.gov); garden.donna@nebraska.gov; Goans, Steve (steve.goans@nebraska.gov); john.kenning@nebraska.gov; Todd Boling (tboling@ci.norfolk.ne.us); Gary Brandt (nbengr@gmail.com); Christensen, Lyle; Gardels, Derek; Mike Milius (mmilius@olssonassociates.com); Claudio Ternieden (cternieden@wef.org)
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PE Senior Project Manager

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lyle.christensen@hdrinc.com | hdrinc.com

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To: Weiss, Kevin[Weiss.Kevin@epa.gov]
From: Bagley, Melissa
Sent: Thur 4/14/2016 2:37:06 PM
Subject: FW: Shields FOIA 3 4-State Governmental Affairs Meeting at EPA Region 7: Meeting Minutes and Final Distribution Package
[Slingshot.txt](#)

From: Shields, Amy
Sent: Tuesday, March 08, 2016 10:03 AM
Subject: Shields FOIA 3 4-State Governmental Affairs Meeting at EPA Region 7: Meeting Minutes and Final Distribution Package
Importance: High

Amy Shields, Ph.D | Environmental Scientist | Water, Wetlands and Pesticides Division | U.S. Environmental Protection Agency Region 7 | 11201 Renner Boulevard, Lenexa, KS 66219 | ☎ (913) 551-7396 | ✉ shields.amy@epa.gov

From: Christensen, Lyle [<mailto:Lyle.Christensen@hdrinc.com>]
Sent: Thursday, December 19, 2013 2:56 PM
To: mark.young@kcmo.org; david.nelsen@kcmo.org; Charles Stevens (Charles.Stevens@kcmo.org) <Charles.Stevens@kcmo.org>; Meyer, Steve (smeyer@springfieldmo.gov) <smeyer@springfieldmo.gov>; acallaway@springfieldmo.gov; Bosma, Connie <Bosma.Connie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Weiss, Kevin <Weiss.Kevin@epa.gov>; Bagley, Melissa <Bagley.Melissa@epa.gov>; Curtis, Glenn <curtis.glenn@epa.gov>; Delashmit, John <Delashmit.John@epa.gov>; Dunn, John <Dunn.John@epa.gov>; Hill, Kimberly <Hill.Kimberly@epa.gov>; Huffman, Diane <Huffman.Diane@epa.gov>; Humphrey, Leslie <Humphrey.Leslie@epa.gov>; Jay, Michael <Jay.Michael@epa.gov>; Lavaty, Ann <Lavaty.Ann@epa.gov>; Matthews, Mark <Matthews.Mark@epa.gov>; Nix, Tanya <nix.tanya@epa.gov>; Petruska, Anthony <Petruska.Anthony@epa.gov>; Porter, Donna <Porter.Donna@epa.gov>; Shields, Amy <Shields.Amy@epa.gov>; Jay Brady

(bradyjay@stanleygroup.com) <bradyjay@stanleygroup.com>; s.hershner@cedar-rapids.org; Ted Payseur (tpayseur@v-k.net) <tpayseur@v-k.net>; Greg Sindt (gregsi@bolton-menk.com) <gregsi@bolton-menk.com>; Schnieders, Adam [DNR] (Adam.Schnieders@dnr.iowa.gov) <Adam.Schnieders@dnr.iowa.gov>; eric.wiklund@dnr.iowa.gov; Dustin J. Miller (DustinMiller@iowaleague.org) <DustinMiller@iowaleague.org>; Mike Tate (mtate@kdheks.gov) <mtate@kdheks.gov>; tawara.lorenzen@jcco.org; Pekarek, Susan, JCW (Susan.Pekarek@jcw.org) <Susan.Pekarek@jcw.org>; Stober, Trent <John.Stober@hdrinc.com>; Mefrakis, Refaat (refaat.mefrakis@dnr.mo.gov) <refaat.mefrakis@dnr.mo.gov>; chris.wieberg@dnr.mo.gov; fgilzow@mpua.org; Phil Walsack (pwalsack@mpua.org) <pwalsack@mpua.org>; Reuel Anderson (reuel.anderson@nebraska.gov) (reuel.anderson@nebraska.gov) <reuel.anderson@nebraska.gov>; Bender, John (john.bender@nebraska.gov) <john.bender@nebraska.gov>; donna.garden@nebraska.gov; Goans, Steve (steve.goans@nebraska.gov) <steve.goans@nebraska.gov>; Kenning, Jon (jon.kenning@nebraska.gov) <jon.kenning@nebraska.gov>; Todd Boling (tboling@ci.norfolk.ne.us) <tboling@ci.norfolk.ne.us>; Gary Brandt (nbengr@gmail.com) <nbengr@gmail.com>; Christensen, Lyle <Lyle.Christensen@hdrinc.com>; Gardels, Derek <Derek.Gardels@hdrinc.com>; Mike Milius (mmilius@olssonassociates.com) <mmilius@olssonassociates.com>; Claudio Ternieden (cternieden@wef.org) <cternieden@wef.org>

Cc: Hunt, George <George.Hunt@hdrinc.com>; Pat.Nelson@CH2M.com

Subject: 4-State Governmental Affairs Meeting at EPA Region 7: Meeting Minutes and Final Distribution Package

Importance: High

[Download Slingshot file\(s\)](#) | New User? Click [here](#).

Iowa League v EPA presentation - ILOC presentation 9-26-13-1.pdf; IMG_1899.JPG; EPA_R7_Glenn_Curtis_Kearney_NWEA_Slide_Show_110613.ppsx; IMG_1901.JPG; Order Denying EPA Petition for Rehearing 7-10-13.pdf; Agenda_4-State_GA_Meeting_11-13-2013.pdf; IMG_1902.JPG; EPA_Mussel_Survey_Methods_800-R-13-003_Aug_2013.pdf; Springfield_MO_Integrated_Plan_Presentation_Steve_Meyer.pdf; 2013_Meeting_Minutes_Final_12-19-2013.pdf; 4-State_GA_Meeting_at_EPA_Region_Audio_Recording_11-13-2013.mp3; Federal_Necessity_Ruling_for_Mississippi_River_Gulf_Hypoxia_09-20-2013.pdf; Greg_Sindt_Hand-out_20131125105921.pdf; Mike_Tate_Hand-outs_WEF_Govt_Affairs_2013.pdf; Iowa Nutrient Reduction Strategy ACWA (10-22-13).pdf; NDEQ_NWEA_2013_Fall_Conference_AWIN_Presentation.pdf; EPA_Proposed_WQS_Regulatory_Clarifications_Federal_Register_09-24-2013.pdf; EPA_WTP_Residuals_Management_Report_EPA-820-R-11-003_Dec_2011.pdf; EPA_Flexibilities-for-States-Applying-EPA-s-Ammonia-Criteria-Recommendations_820-F-13-001_Apr_2013.pdf; 44316 Effluent Line Newsletter_proof121713_LChristensen_Edits.pdf; IMG_1900.JPG; Iowa League of Cities, 8th Cir 3-25-13.pdf; EPA_Guiding_Principals_for_Developing_Numeric_Nutrient_Criteria_Webinar_09-13-2013.pdf; 4_States Meeting Attendee List 112013.xlsx; Federal_Necessity_Ruling_for_Mississippi_River_Gulf_Hypoxia_Summary_Article_09-23-

2013.pdf;

Access Slingshot.hdrinc.com home page

To All:

As per earlier correspondence, I am sending you this email and numerous attachments through an add-in called "Slingshot" through my office's secure email system, which will allow the transfer of large files pretty seamlessly. You can assign your own user name and secure password. What you can download at your discretion is any or all of the following materials (be sure to scroll through the entire list of files, and you can select them all at once if you wish):

- Meeting Agenda

- Meeting Sign-in Sheet (spreadsheet for future reference). Hopefully all previous typos have been corrected and additional attendees and telephone numbers have been inserted. This list is the same one I used to send this email, sorted by representation. On prior email, there were "bounce-backs" from Steve Neugeboren, Leslie Humphrey, Mark Matthews, Donna Garden, Jon Kenning, and Susan Pekarek.

- Complete Meeting Minutes (final draft after receiving some good review/editing comments from Mike Tate of KDHE). The meeting minutes were prepared from both written notes from myself and a number of other people, plus the details came from the audio recording and summarized as to intent as best as possible.

- Presentation Slides, Hand-outs, and Supplemental Reference Materials noted in the Minutes. The complete meeting MP3 (high definition) audio recording file is the only really large file at 394 Mb, but with high-speed email, even that shouldn't take too long to download.

- As per earlier email today from Charlie Stevens (some of you missed this email), wanting to know if we, as a group, would like to adapt NWEA's final draft Effluent Line Newsletter article on our 4-State Meeting to a nation-wide distribution WEF publication, I have attached a red-line excerpt PDF file from our final magazine draft that is ready for publication at the first of next month. This will show you a little better what it would look like in magazine format; realizing, of course, we would have to decide just how detailed the article would actually have to be relative to the much more detailed meeting minutes. The NWEA publication was pretty hurriedly pulled together, so much of the basis for a WEF article should still be extracted from the final meeting minutes to the extent more or less detail is desired.

Well, that's "it" for now. I want to once again thank Glenn Curtis and the rest of the EPA

Region 7 staff for hosting us, and thank the rest of you for making the exceptional effort to attend; especially EPA HQ staff and Claudio Ternieden from WEF, who had long travel distances. I'll close by wishing you all Happy Holidays ahead, and please do continue to keep in touch!!

Lyle r. christensenHDR Engineering, Inc.
PE Senior Project Manager

Professional Associate
8404 Indian Hills Drive | Omaha, NE 68114
402.399.1329 | c: 402.680.0142
lyle.christensen@hdrinc.com | hdrinc.com

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Slingshot: Powered by TIBCO Software Inc.

To: Bosma, Connie[Bosma.Connie@epa.gov]
From: Curtis, Glenn
Sent: Tue 11/12/2013 5:52:12 PM
Subject: RE: Trip to KC

I will get you guys first and then him after. Need his airline, though.
See you then.
Have safe trip

-----Original Message-----

From: Bosma, Connie
Sent: Tuesday, November 12, 2013 11:40 AM
To: Curtis, Glenn
Subject: RE: Trip to KC

He gets in at 5:40 and we get in at 6:10. He can wait for us at the airport. We can all take a cab and meet you at the BBQ place if you want. I don't want you to get stuck in rush hour traffic.

-----Original Message-----

From: Curtis, Glenn
Sent: Tuesday, November 12, 2013 12:35 PM
To: Bosma, Connie
Subject: RE: Trip to KC

I just thought, you are right - If I get there at 540 I will be in major traffic. So I may catch him a little later than that. Depending on when you get in, etc. u could give him my phone number or whatever. Sorry to be complicated

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From: Bosma, Connie
Sent: Tuesday, November 12, 2013 11:29 AM
To: Curtis, Glenn
Subject: RE: Trip to KC

Steve is coming in at 5:40, so I told him to wait for us. Our SW flight number is 3744

-----Original Message-----

From: Curtis, Glenn
Sent: Tuesday, November 12, 2013 12:24 PM
To: Bosma, Connie
Subject: RE: Trip to KC

Ok Great.

Kevin's loss though.

If Steve is near the same time we can try to work him in; just need to know the when / where info (Airline - Flight number would be good). You know KC is now down to 2 terminals / both close by.

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Let me know

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Call me if you have any delays

By the way, do you have your flight number?

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To: Bosma, Connie

Subject: RE: Trip to KC

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From: Bosma, Connie
Sent: Tue 11/12/2013 3:54:10 PM
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We get in at 6:10 on a southwest flight. My cell number is **Redacted**

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From: Curtis, Glenn
Sent: Tuesday, November 12, 2013 10:52 AM
To: Bosma, Connie
Subject: RE: Trip to KC

They do have tvs, not big screens though. Its not a sports bar per se but there are fair sized tvs around the place and we can try to get a table close by.
And afterwards if you want there are sport bar options. I think MSU and UK play at 6 and Duke - KU is 830

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To: Weiss, Kevin[Weiss.Kevin@epa.gov]
Cc: Bosma, Connie[Bosma.Connie@epa.gov]
From: Curtis, Glenn
Sent: Wed 10/23/2013 7:35:59 PM
Subject: 8th circuit decision

Any plans to discuss agency position on call tomorrow.

I will be bringing it up again. I have two talks coming up – Nov 7 (Nebraska conference) and Nov 13 (4-States - WEF Mtg) both have this issue as their no.1 question.

I conducted a call today with the 4 regions (5,6,7,8) involved in the 8th circuit. Let me just say, Additional clarification would be helpful.

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From: Weiss, Kevin
Sent: Wed 10/23/2013 7:53:31 PM
Subject: FW: 8th circuit decision

FYI – Andrew walked by right before the Branch meeting and said he wants to follow up on Iowa League of Cities ‘right after Monday’s stormwater meeting’.

From: Curtis, Glenn
Sent: Wednesday, October 23, 2013 3:36 PM
To: Weiss, Kevin
Cc: Bosma, Connie
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To: Weiss, Kevin[Weiss.Kevin@epa.gov]; Bosma, Connie[Bosma.Connie@epa.gov]
Cc: Flournoy, Karen[Flournoy.Karen@epa.gov]
From: Curtis, Glenn
Sent: Mon 10/28/2013 7:13:34 PM
Subject: Fw: presentation info from Ted Payseur
Iowa League of Cities v EPA presentation.pdf

From presentation last week to Ia DNR. Need to discuss.

From: Deb Luke <dLuke@v-k.net>
Sent: Monday, October 28, 2013 1:04:41 PM
To: Curtis, Glenn
Subject: presentation info from Ted Payseur

Ted asked that I forward this powerpoint (pdf) presentation to you.
Please upload to your computer so he can use it on Nov. 13th. Thank you.

--
Deb Luke
V&K

Iowa League of Cities v. EPA

8th Circuit Decision

Impacts on Municipal Compliance Responsibilities

John C. Hall, Hall & Associates
Washington, D.C.
June 5, 2013

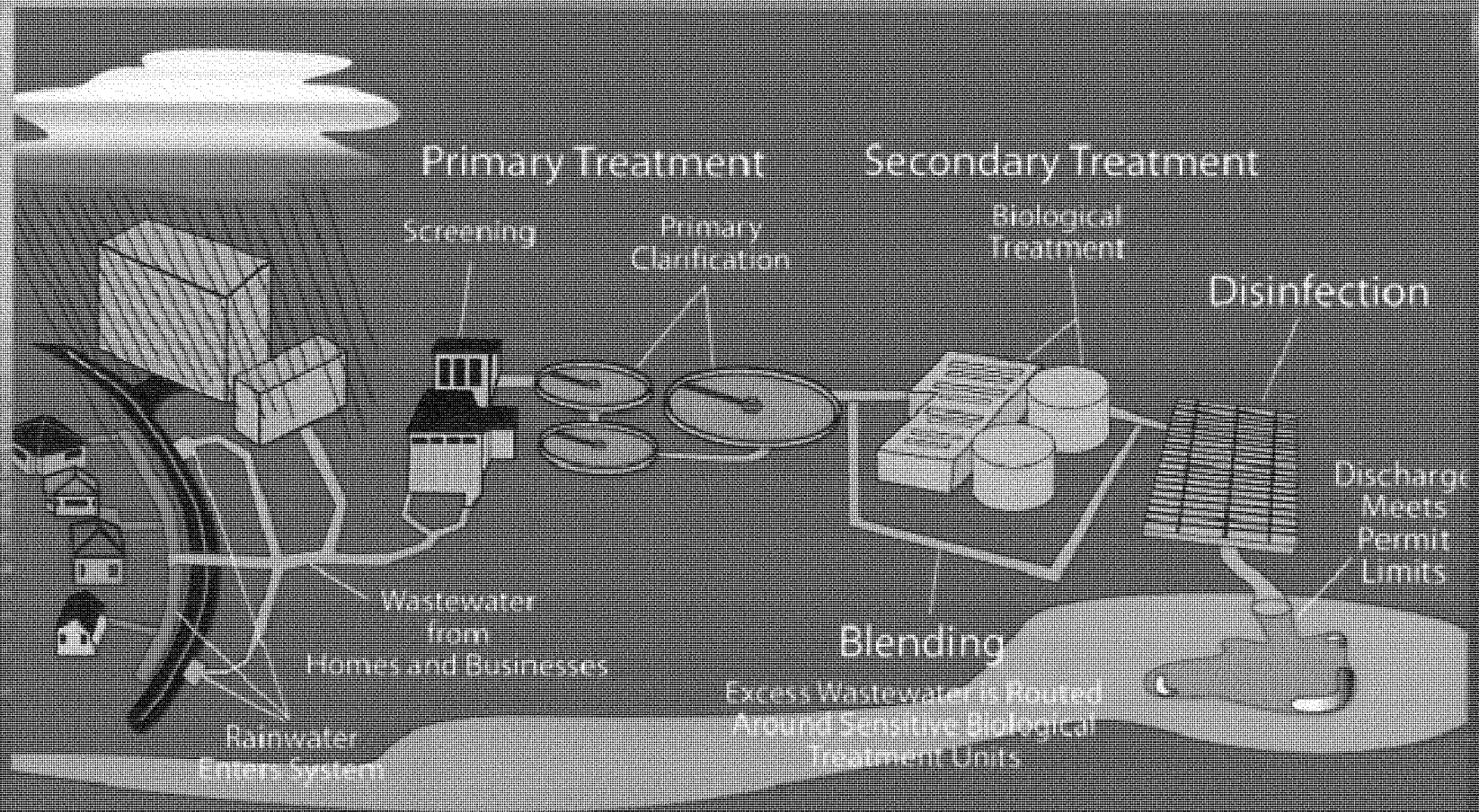
Background

- 2005-2008 EPA develops internal policies to regulate wet weather flows more stringently:
 - Blending prohibition
 - Bacteria mixing zone prohibition

States pressured to change rules or deny permits (through 2013)

- Promoted state administrative orders and federal enforcement to ensure compliance

What is “Blending”



Mixing Zone Examples



Federal/State Activities Impacted

- CSO LTCP, Stormwater, NPDES permits, WWTP design, SSO remedies, TMDLs, Schedules of compliance/enforcement orders
- State rulemaking activities
- Criteria updates and modification requests

Direct Municipal Consequences of EPA's Activities

- State's limited remedial options for compliance
- Communities selected more costly and time consuming options (detention basins versus peak flow treatment options)
- Compliance reporting expanded on plant operations
- Section 303(d) lists expanded
- Bacteria standard modifications restricted
- MS4 requirements expanded

How Did EPA Enforce This?

- Threatened state agencies with objection letters
- Email and informal correspondence
- Federal and state consent decrees
- Permit modifications, LTCPs
- TMDL development
- Cost Impact >\$200 billion nationwide

Court Decision Summary

Blending Ban:

VACATED

Bacteria Mixing Zone Ban:

VACATED

Regulating Blending:

BEYOND EPA'S AUTHORITY

Flavor of the Decision

- *Tyranny of small decisions*
- *Eviscerated direct appellate review*
- *Eviscerate state discretion*
- *Rulemaking masquerading as explication*
- *Irreconcilable with rules*
- *Orwellian Newspeak*
- *Dissembling*
- *Belated Backpedaling*

Hedging a concrete application of a policy within a disclaimer about hypothetical future contingencies does not insulate regulated entities from the binding nature of the obligations and similarly cannot serve to inoculate the agency from judicial review.

“Effluent Limitation or Other Limitation”

We agree that an agency action is a "limitation" within the meaning of *section 509(b)(1)(E)* if entities subject to the CWA's permit requirements face new restrictions on their discretion with respect to discharges or discharge-related processes

"The EPA's position that bacteria mixing zones in waters designated for primary contact recreation . . . should not be permitted" is a restriction that directly affects the concentration of discharge from a point source and therefore is an effluent limitation."

Due Process Injury Protected

Notice and comment procedures for EPA rulemaking under the CWA were undoubtedly designed to protect the concrete interests of such regulated entities by ensuring that they are treated with fairness and transparency after due consideration and industry participation. *See, e.g., Chrysler Corp. v. Brown, 441 U.S. 281, 316, 99 S. Ct. 1705, 60 L. Ed. 2d 208 (1979) ...*

Thus, the League has established an injury in fact related to the EPA's purported procedural deficiencies.

No Technology Mandate

The EPA has interpreted the CWA regime as "preclud[ing] [it] from imposing any particular technology on a discharger."

"The bypass rule does not require the use of any particular treatment method or technology.... The secondary treatment regulations also do not mandate the use of any specific type of technology."

"Each facility has the discretion to select any technology design and process changes necessary to meet the performance-based discharge limitations and standards..."

"EPA's new blending rule is a legislative rule because it is irreconcilable with both the secondary treatment rule and the bypass rule."

Mixing Zones

One element of state water quality standards are policies regarding "mixing zones."

But as one of its water quality standards, a state's policy on mixing zones remains subject to the triennial review of the EPA.

"EPA eviscerates state discretion to incorporate mixing zones into their water quality standards with respect to this type of body of water."

EPA Acted Beyond Statutory Authority

- If we choose to vacate solely on procedural grounds, regulated entities who have already spent considerable time crossing the hot shoals of regulatory uncertainty must continue to do so.
- *The blending rule clearly exceeds the EPA's statutory authority and little would be gained by postponing a decision on the merits. As discussed above, the September 2011 letter applies effluent limitations to a facility's internal secondary treatment processes, rather than at the end of the pipe.*

The EPA would like to apply effluent limitations to the discharge of flows from one internal treatment unit to another. We cannot reasonably conclude that it has the statutory authority to do so.

Status of Decision

- Court Awarded > \$500, 000 in Attorney's Fees
- EPA will likely seek Supreme Court Review –
Not likely to be Granted

*This is just one of many EPA rule
reinterpretations impacting municipalities*

How to Achieve “Status quo Ante”

- Revise unnecessary state rules
- Revise state and federal orders
- Reopen the schedules of compliance
- Amend permits and LTCPs
- Seek mixing zone approval
- Revise the TMDLs
- Amend impairment listings

Meeting with DNR to Discuss Case Impacts

Curtain Call

- Special thanks to the Iowa League of Cities, DNR and IAWEA for supporting this case. We would not be where we are today without you standing up for your rights where others have failed to do so.

Mayor Uehling



Other Issues in the Wings

- DNR Nutrient Strategy (~\$1.5 billion!!!)
- EPA Affordability "Guidance"
- Implementing GOM requirements w/o any applicable WQS or TMDL
- EPA Stormwater Rule (Presumed Impairment)
- Bypass rule defense/design storm
- Arsenic/Fish Consumption Criteria

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